

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

CHAD STEVEN TINGLEY,)	
)	
Petitioner/Defendant,)	
)	CIVIL NO. 10-cv-162-JPG
vs.)	
)	CRIMINAL NO. 06-cr-40003
UNITED STATES of AMERICA ,)	
)	
Respondent/Plaintiff.)	

MEMORANDUM AND ORDER

GILBERT, District Judge:

This matter is before the Court on Petitioner’s motion to proceed *in forma pauperis* on appeal (Doc. 6) and his motion for a certificate of appealability (Doc. 8).

Title 28 U.S.C. § 1915(a) provides that any United States court may authorize an indigent party to appeal a civil action without prepayment of costs. Based on the affidavit submitted by Petitioner and the standards contained in § 1915, the Court finds that Petitioner is indigent. Nevertheless, a court can deny a qualified applicant leave to file an appeal *in forma pauperis* if the action is clearly frivolous or malicious. Section 1915(a) also provides, in pertinent part, "[a]n appeal may not be taken *in forma pauperis* if the trial court certifies in writing that it is not taken in good faith." 28 U.S.C. § 1915(a)(3). The Seventh Circuit has stated that "[a] plaintiff who has been told that the claim is foreclosed and then files a notice of appeal without offering any argument to undermine the district court’s conclusion is acting in bad faith." *Newlin v. Helman*, 1997 WL 409403 (7th Cir., decided July 23, 1997).

In denying Petitioner’s § 2255 Motion, this Court found that Petitioner had entered into a

valid plea agreement in which Petitioner waived his right to pursue relief pursuant to § 2255. Although the plea agreement carved out some exceptions to the waiver, those exceptions were not applicable to Petitioner's action. The instant appeal, therefore, is frivolous, and Petitioner's motion to proceed *in forma pauperis* (Doc. 6) is **DENIED**. Plaintiff shall tender the appellate filing and docketing fee of \$455 to the Clerk of Court in this District, or he may reapply to the Seventh Circuit Court of Appeals for leave to proceed *in forma pauperis* on appeal.

Pursuant to 28 U.S.C. § 2253, a certificate of appealability may issue "only if the applicant has made a substantial showing of the denial of a constitutional right." Further, § 2253(c)(3) provides: "The certificate of appealability under paragraph (1) shall indicate which specific issue or issues satisfy the showing required by paragraph (2)." Petitioner only reiterates the issues raised in his motion as grounds for this Court to issue a certificate of appealability. However, the Court finds that Petitioner has not made "a substantial showing of the denial of a constitutional right." Accordingly, the motion for a certificate of appealability (Doc. 8) is **DENIED**.

IT IS SO ORDERED.

Dated: August 19, 2010.

s/ J. Phil Gilbert

U. S. District Judge